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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

GARRICK LAU, WILSON LAU and)	CIVIL NO. 18-00295-DKW-RT
MABEL LAU,)	
)	Honolulu, Hawaii
Plaintiffs,)	
)	May 6, 2019
vs.)	
)	
HONOLULU PARK PLACE, AOA;)	DEFENDANTS' MOTION TO
CRAIG WILLIAMS; REBECCA)	DISMISS FOR FAILURE TO STATE
FRIEDMAN; RICHARD BALDWIN;)	A CLAIM
MELANIE KING; KATHERINE)	
CROSIER; TRAPPEUR RAHN;)	
CHRISTINE, TRECKER; DENNIS)	
PADLOCK; KELLY BREHM; TOM)	
HEIDEN; GARRY BELEN; WALTER)	
MIRANDA,)	
)	
Defendants.)	
)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DERRICK K. WATSON,
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

For the Plaintiffs:	LUNSFORD D. PHILLIPS, ESQ.
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	Honolulu, Hi 96813

1 APPEARANCES: (CONTINUED)

2 For the Defendants:

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21 Official Court Reporter:

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United States District Court
300 Ala Moana Boulevard
Honolulu, Hawaii 96850

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25 Proceedings recorded by machine shorthand, transcript produced
with computer-aided transcription (CAT).

1 May 6, 2019 10:32 a.m.

2 THE CLERK: Calling Civil Number 18-00295-DKW-RT,
3 Garrick Lau, et al. versus Association of Apartment Owners of
4 Honolulu Park Place, et al.

5 This case has been called for hearing on defendants'
6 motion to dismiss for failure to state a claim.

7 Counsel, please make your appearances for the record.

8 MR. PHILLIPS: For the plaintiffs, Your Honor,
9 Lunsford Phillips. With me at counsel table are the
10 plaintiffs. On the far left Garrick Lau and behind us Mabel
11 Lau, and next to me to help me with paperwork is Wilson Lau.

12 THE COURT: All right. Good morning to all four of
13 you.

14 MR. MAJOR: Good morning, Your Honor. David Major and
15 Brian Mullin on behalf of the defendants.

16 THE COURT: Good morning to both of you as well.

17 What I really want to hear from the parties about this
18 morning isn't the pending motion. I don't feel like I need
19 much assistance really; I don't really need any assistance in
20 ruling on this motion.

21 What I am curious about is what this case is about.
22 And when I say that, I don't mean on the surface what is this
23 case about. I can read that. I want to know what is really at
24 issue in this case.

25 So I don't care who cares to address it first.

1 MR. PHILLIPS: May I, Your Honor?

2 THE COURT: Sure.

3 MR. PHILLIPS: The Court, through the pleadings, is
4 aware of the basic facts. There was, up until a period -- what
5 was it now, has been two years? Before about two years ago for
6 a period -- a long period, ten years almost, after the Laus
7 acquired this modified van, they were allowed to park on an
8 availability basis, no assignment, no proprietary interest in
9 any particular space, first come first serve, if there is
10 available, they were able to park in the guest parking. This
11 was important because they cannot use the parking on the
12 three -- I think there are three or four levels of parking that
13 are also available.

14 THE COURT: At the risk -- Mr. Phillips, at the risk
15 of being rude, I'm going to be rude. I can read that. That's
16 exactly what I asked not to hear about. I know what this case
17 is about on its surface. So the question is, I sent all of you
18 twice, now it appears that you don't understand -- I don't mean
19 you personally, Mr. Phillips -- but the parties don't appear to
20 understand why I did it. I sent you twice to a settlement
21 conference now with two different magistrate judges. And
22 you've come back both times telling me that you aren't able to
23 reach a resolution in a case that involves a parking space.

24 Is that the kind of dispute that two capable firms
25 with lawyers leading their efforts aren't able to reach

1 resolution on a goddamned parking space, that it's so critical
2 that you need to involve this Court? It seems unprofessional
3 almost to me that the parties have not been able to reach
4 resolution on this, and I'm incredibly disappointed in the fact
5 that you have not been able to do that.

6 MR. PHILLIPS: I agree.

7 THE COURT: If you need resolution on this motion, I'm
8 happy to do it.

9 MR. PHILLIPS: This is a no-cost, no-must policy
10 change that can be and should have been given. We don't
11 understand why it was created by them by taking away that
12 permission in the first place. So I'll let them answer.

13 THE COURT: Mr. Major.

14 MR. MAJOR: Yes, Your Honor. Well, to answer your
15 question simply, they have asked for a lot of money and they
16 have asked for a parking space that the Association can't
17 functionally give them. This all stems from the Association --

18 THE COURT: I think that's a bunch of crap.

19 MR. MAJOR: Okay, Your Honor. Well, I understand your
20 position on that.

21 THE COURT: No, you don't. How can you understand my
22 position when I haven't begun to explain it to you?

23 MR. MAJOR: Well, I understood --

24 THE COURT: The notion that you think that they have
25 asked for a proprietary interest and therefore that's why your

1 client can't give them what they want, where is that? Show me
2 in their complaint where they've asked for a proprietary
3 interest in this parking space?

4 MR. MAJOR: They asked for --

5 THE COURT: Show me in the complaint. Can you do
6 that?

7 MR. MAJOR: Your Honor, I see that you have a position
8 on this particular subject matter; I don't think it does us any
9 good to argue about it. I'm not trying to argue with you.
10 What I'm trying to do is answer your initial question as to why
11 we are all standing here. And I'm happy to do that. But if
12 you just want to tell me that you think the parking space issue
13 is not a big deal, then I don't know that that's going to be
14 productive because you're not going to understanding how we're
15 still standing here. If it wasn't a big deal, we would not
16 have gone through two settlement conferences and been unable to
17 resolve it. It is a big deal, and it's a big deal for a
18 reason. I'm happy to tell the Court that if you want.

19 THE COURT: I want you to answer my question.

20 MR. MAJOR: If they are requesting a proprietary
21 interest? If they are requesting the right to use a parking
22 spot whenever they deem fit, then, yeah, that's a land interest
23 in a parking stall.

24 THE COURT: You're not getting it; okay? I've asked
25 you twice now, Mr. Major.

1 MR. MAJOR: Yes.

2 THE COURT: Where in the complaint -- this is the
3 motion to dismiss, is it not?

4 MR. MAJOR: This is a motion to dismiss, Your Honor.

5 THE COURT: Okay. So I have to rule based on what the
6 complaint alleges, not what you concoct in your briefs.

7 MR. MAJOR: Okay.

8 THE COURT: So you tell me, and you've said it again
9 now orally, you've written it twice in your opening brief and
10 in your reply that this is something that they demanded, a
11 proprietary interest that the AOA is incapable of providing to
12 them even if it wanted to. So where in the complaint tells me
13 that?

14 MR. MAJOR: Our position is that at the relief on page
15 6, the plaintiffs request equitable relief in the form of an
16 injunction allowing the defendants to allow the plaintiffs to
17 park their van in the HPP guest parking forthwith. So they
18 want an order establishing a right to park wherever they want,
19 as long as they want, in the guest parking.

20 THE COURT: They want permission to park in a guest
21 parking spot. So that to you conveys the notion that they want
22 a proprietary conveyed interest in property?

23 MR. MAJOR: They definitely want an interest. They
24 want the right to park there when they don't have any right to
25 park there for long term.

1 THE COURT: So answer my second question. I'm looking
2 at the same paragraphs; I don't read it the same way. And
3 you're probably right, continuing to discuss it from that
4 perspective is not particularly productive. But you are
5 pointing to the same paragraphs that I'm reading, I just wanted
6 to make sure that I wasn't missing something or overlooking
7 something. So you tell me, what is at issue? The fact they
8 want a parking spot and they want too much money, that's what's
9 holding a resolution up?

10 MR. MAJOR: Yes. But if you want a little background,
11 what happened was is the board members got together and they
12 organized, and one of the board members offered his own
13 personal parking space in exchange for one of the Laus' parking
14 spaces, and that was -- they thought they had an arrangement
15 basically where he could make it to that floor and he could
16 park in that spot and that would be a long-term interest the
17 board would be aware of and follow through with, and then that
18 got backed out on and this complaint got filed.

19 And so the Board, whether you think it's right or
20 wrong, tried their best to work this situation out with the
21 Laus, and we have all kinds of letters from Mr. Lau blowing
22 with the wind, very angry, very happy with the board. And that
23 will come into evidence later on. And so what you have is a
24 situation where the Board put in a lot of effort to try and get
25 this situation resolved. They thought they had it resolved and

1 then this complaint came because they were still informing
2 Garrick that he could not park in the guest parking stalls, and
3 then we get this complaint and we get a demand for \$150,000 for
4 a parking space. And what they have done over time, realizing
5 that the interest I guess is something that would be barred, is
6 they've continuously softened this approach to, Okay, all we
7 want to do is the right to park there. Well, is it an
8 exclusive right? How is that right defined over time? What
9 does that mean? And these board members are all a little wary
10 of this proposal at this point.

11 And so, with all due respect, I'm not sure how much
12 experience the Court has with boards, it takes a little bit of
13 time to get them back around after they put their hand on the
14 stove. So that's why we are standing here right now. And
15 that's sort of what I can tell the Court about the
16 circumstances.

17 THE COURT: This space that one of the board members
18 offered, I gather that's not on the ground floor?

19 MR. MAJOR: It's on the first floor, I believe.

20 THE COURT: Which is something other than a ground
21 floor?

22 MR. MAJOR: Well, we rode in the van -- it's the
23 second floor ramp that he hit hard. And so that was basically
24 the circumstances.

25 THE COURT: So this space that was offered still

1 requires use of the ramp, maybe I should ask it that way?

2 MR. MAJOR: The first ramp, yes. But he doesn't have
3 to drive to his floor, I believe.

4 THE COURT: But all of the ramps allegedly -- I'm not
5 expecting you to concede any of this -- but in their view, all
6 of the ramps result in the same kind of damage to the
7 undercarriage of the van?

8 MR. MAJOR: Yes, Your Honor, that's why we didn't
9 argue this in a motion to dismiss because, yes, they did state
10 that in their complaint. So we are not trying to argue -- we
11 didn't argue the granting of the accommodation via the space --

12 THE COURT: So what is the reasonable accommodation
13 that you feel they've rejected?

14 MR. MAJOR: Well, they rejected the space for sure --
15 to swap out the space.

16 THE COURT: Is that what you're referring to though?
17 Because your papers say they concede a reasonable accommodation
18 that you offered.

19 MR. MAJOR: No, Your Honor. The papers --

20 THE COURT: That's not what it says?

21 MR. MAJOR: No, it does say that, but we are not
22 talking about the same subject matter. You're kind of jumping,
23 Your Honor, respectfully. You asked why we are here, then you
24 obviously were not -- didn't like our approach on the relief.

25 THE COURT: It's because I'm entitled to have my

1 questions answered. I don't have to listen to what you say. I
2 want my questions answered, right?

3 MR. MAJOR: I'm trying to get to it, Your Honor.

4 THE COURT: Okay, but you're telling me that's not why
5 I'm jumping around for you. My question is, you refer to
6 plaintiffs concede that defendants made it -- are you
7 disgusted, Mr. Major?

8 MR. MAJOR: No, I'm not at all. I'm just trying to
9 listen to the Court --

10 THE COURT: Okay. By your body language, it appears
11 that you are.

12 MR. MAJOR: Your Honor, I'm not trying to infer that
13 at all.

14 THE COURT: In page 3 of your reply brief, the very
15 second sentence on the top of the page, you say that plaintiffs
16 concede that defendants made a reasonable accommodation and
17 that -- what? I'm reading. You're telling me that's not what
18 it says?

19 MR. MAJOR: I'm not saying that.

20 THE COURT: Plaintiffs concede that defendants made a
21 reasonable accomodation upon request all of which were rebuked
22 by the plaintiffs. So I'm trying to understand what that
23 refers to.

24 MR. MAJOR: I believe -- let me look, Your Honor. Do
25 they attach documents on the parking stall? Page 3.

1 Your Honor, I don't know it off the top of my head why
2 it was worded that way. If I could state our fundamental
3 premise for that part of the motion?

4 THE COURT: Sure.

5 MR. MAJOR: Our fundamental premise for that part of
6 the motion is that the point of accommodation law is to take a
7 person with a handicap and apply the same standards to them to
8 allow them reasonable use that you do to a homeowner. And so
9 what you look at in preferred parking cases is all these cases
10 out there saying that a preferred parking stall is not a
11 reasonable accommodation situation.

12 Here you have a situation where the family lived there
13 for a while, the son bought a vehicle -- he bought a vehicle
14 that doesn't fit in the spot that he already has and exists.
15 He has a place to park. Just like any other regular -- not
16 handicapped person, you -- if you buy a car that doesn't fit in
17 the parking garage, you don't get to then get a guest stall.
18 And that's the point is that similarly situated people, whether
19 handicapped or not, are treated the same under the similar
20 circumstances. And so the accommodation -- if he has a spot
21 and he bought a vehicle that doesn't fit, then all he is
22 requesting is a preferred parking spot. And that's the
23 essential premise. So I don't know why I use the word
24 "conceded." I think I was arguing about that fundamental
25 premise, but I don't have a recollection.

1 THE COURT: So the facts, as you guys see it, and I'm
2 not suggesting that it's not true, I don't know, all I see is
3 the complaint at this stage, is that they purchased the van
4 knowing what the situation was?

5 MR. MAJOR: There is no doubt that they purchased the
6 van knowing the situation.

7 THE COURT: All right. And so they brought this upon
8 themselves in some ways; is that fair?

9 MR. MAJOR: Just like anybody who buys a car that
10 doesn't fit in their parking garage.

11 THE COURT: Okay.

12 MR. MAJOR: That was it. And so I'm not sure why I
13 used the word "conceded," but I think I meant that he conceded
14 that he has a stall to park in. And then if the vehicle
15 doesn't fit or go up the ramp or whatever, just like if I go
16 out and buy a Ferrari and I can't drive it up the ramp, then I
17 don't get a guest park parking stall. And those are the same
18 or similarly situated circumstances, the car doesn't fit.

19 THE COURT: The parking space that the Laus have I
20 assume there is at least one or more deeded spaces that they
21 get for owning property?

22 MR. MAJOR: Yes, Your Honor. They have two spots.

23 THE COURT: Two spots. And their two spots are
24 adjacent to one another?

25 MR. MAJOR: You know, I don't know if they are front

1 back or side to side.

2 THE COURT: But they are on an upper floor?

3 MR. MAJOR: They are on the second floor, I believe.

4 THE COURT: Is that labelled two --

5 Hang on. You guys -- the Laus will have a chance to
6 respond.

7 MR. MAJOR: I'm not trying to establish these facts.

8 THE COURT: No, no, I'm just curious. I'm just
9 curious. So when you say the second floor, is that labelled
10 two or something other than two?

11 MR. MAJOR: I'd have to defer to them, Your Honor.

12 THE COURT: Okay. So it might be G and then one and
13 then two going up?

14 MR. MAJOR: Yeah, I know the ramp goes down to the
15 guest parking as opposed to up to the other ones. And the
16 stalls are on the subgrade floor.

17 THE COURT: Okay. Well, I've not been there.

18 MR. MAJOR: I have not been there either. I only saw
19 the pictures.

20 THE COURT: Perhaps Mr. Phillips will know. All
21 right. Is there anything else that you wish to advance? I've,
22 of course, read the papers.

23 MR. MAJOR: I think -- well, if plaintiffs are
24 prepared to commit -- this has never come out the way
25 Mr. Phillips stated it, but if plaintiffs are prepared to

1 commit to the nonexclusive use, first come first serve,
2 basically something that just says -- guarantees basically
3 nothing with respect to a parking space, if it's full, then
4 that hasn't been discussed. That was never raised at all in
5 any of the discussions. So that's a totally different thing, I
6 think.

7 THE COURT: Well, that's why. I mean, that's why I
8 asked you all to get together with two different judges now
9 because that's what I read in their papers. Now, that may not
10 be their position today and maybe that wasn't their position a
11 month ago, I don't know, but when I read their papers and the
12 attachments, which honestly are not proper on a motion to
13 dismiss, some of the stuff that they attached in terms of the
14 declarations and some of the underlying correspondence with the
15 board it looks like, that seemed to me to be their approach,
16 which is what exactly what you said: The nonexclusive use of
17 one of the guest spots and if all of the guest spots are full
18 they are out of luck.

19 And what they said, if I'm reading their
20 correspondence correctly, is there is something like 44 spaces,
21 it's virtually always the case that something is available and
22 that they are prepared to live with whatever that might be.
23 Even if it might be the most distant of those 44 spaces
24 relative to the entrance, and even if there are no spaces
25 available, then they either park outside, I assume, I don't

1 know where this building is. I'm sure there is probably
2 something on the street that might be available if they prefer
3 that as an alternative to going up the ramp and damaging their
4 vehicle. So that's what I understood their request to be.

5 Now the money part I don't know anything about. It
6 seemed like a few hundred dollars in existing damages to the
7 van that they were looking for, and it seemed for that reason
8 to be not a big obstacle from where I'm sitting.

9 Now if they're asking for \$150,000 as you just said,
10 and I have no reason to dispute what you're saying, that
11 seems -- I can maybe see where the defense is coming from with
12 that in mind, even if you include attorneys fees in that number
13 separate and apart from whatever damages the Laus themselves
14 may have incurred.

15 So that gives me perspective and that helps me see
16 where at least the AOA is coming from. I appreciate that.

17 Mr. Phillips.

18 MR. PHILLIPS: Yes, Your Honor. That's the position
19 the Court correctly understands their position, and that was
20 their position before they ever went out and got a lawyer.
21 They went and got a lawyer because that position, that request,
22 which seems imminently reasonable, was denied. They were
23 forced to bring suit. They did make a demand and the response
24 was a term of, I guess defense insurance law, I'm not familiar
25 with it, a walk-away. That was their position. Their position

1 in response to our demand was walk away, which I inferred meant
2 both sides just forget it and pretend it never happened or
3 something.

4 So, anyway -- and since then because this case is
5 ridiculous to litigate, but the magistrates, if I may,
6 suggested that you guys try to work something out. And one
7 idea that was floated was perhaps a different vehicle could be
8 obtained. The details of who and what were not discussed, but
9 just the concept of rather than changing anything else, get a
10 further modified van or get a different van that would not have
11 this same problem of the bottoming out on the ramp.

12 And we met their counsel and defense counsel and
13 looked -- they saw -- we drove the van up and they could see
14 how it scraped, and then we gave -- the Court gave us a month
15 or something, six weeks, to investigate whether or not there
16 was another vehicle that would not have that same problem. And
17 they got back to us at the end of that time and said, I'm sorry
18 we can't find any other vehicle that will not have this
19 problem.

20 So that concept for settlement was tried and
21 unsuccessfully, not for the want of trying, but -- I can't
22 force them to settle. But it's ridiculous.

23 THE COURT: Did you make known, and again I don't
24 mean, when I say "you," I don't mean you personally, did the
25 parties make known to either of the two magistrate judges the

1 issues as far as the parking space itself is concerned? In
2 other words, what you both appear now to agree is at least a
3 good start to a discussion which is the nonexclusive use, not a
4 conveyed interest, in any parking space, but a guest parking
5 space on a come-as-you-are basis, and if it's all full then the
6 Laus are out of luck. Was that something -- you seem to say
7 that was on the table. I don't know if you're now saying that
8 it's no longer on the table, but Mr. Major has suggested that
9 that might be the starting point of a fruitful discussion. At
10 least he has intimated that. Are we on the same page there?
11 Is it worth going back to Judge Trader who is now the current
12 magistrate judge, or are we beating a dead horse?

13 I don't want to send you back. I know you both made
14 efforts twice now at my request, I don't want to send you back
15 a third time if you're both telling me that it's just a waste
16 of time at this stage. We will move on with the litigation if
17 that's the case, but it just seems like the more we spend, the
18 more time you spend litigating this case, the more difficult
19 it's going to be to try to resolve things as we go forward.

20 Both sides are going to spend a lot more money than,
21 it appears to me at least, this case is worth. And that's
22 where I kind of draw the line. I don't want either side to do
23 that. I don't think it's fruitful for your clients. But I
24 can't, just like you, you can't force them to settle, I can't
25 force either one of you to settle, that's up to you. You've

1 got to want to do it, both sides have got to want to do it.
2 But if this is the starting point of that discussion, then
3 Magistrate Judge Trader I know is willing and prepared to get
4 back together with you all if you think there is some chance
5 there.

6 MR. PHILLIPS: I believe that he understands that that
7 is the plaintiffs' position that we are not looking for any
8 sort of assigned space on the ground floor, we are not looking
9 for any proprietary interest in any particular space. We want
10 to continue, just like we did for ten years, which is to park
11 if there is an open space. I believe he understands that's
12 the -- that's the plaintiffs' position.

13 THE COURT: So before --

14 MR. PHILLIPS: That's always been.

15 THE COURT: You said as of two years ago, before the
16 Board didn't allow this situation to exist any longer, that is
17 how you were operating or your clients were operating?

18 MR. PHILLIPS: For ten years up to two years ago. And
19 then for a reason that I'll be interested to learn through
20 discovery by asking the Board: Why the change? As far as we
21 understand, there's never been -- never been any complaint
22 about the prior situation, arrangement. That's why we hope
23 that there is not bad faith or ill will behind the decision to
24 stop the ten-year practice.

25 THE COURT: But this ten-year practice that you're

1 talking about is what we are talking about?

2 MR. PHILLIPS: Yes. If there is an open space in the
3 guest parking.

4 THE COURT: All right. And if there isn't, then
5 you're just out of luck, right?

6 MR. PHILLIPS: SOL.

7 THE COURT: And there was nothing deeded to the
8 Laus -- nothing proprietary given to them by the Board.

9 MR. PHILLIPS: Absolutely not. Never was, nobody
10 discussed it, nobody even thought of it or don't want it, there
11 is no need. It was working out fine, just fine. Like I said,
12 there's so many places. There's a couple dozen open spaces 29
13 out of 30 days.

14 THE COURT: Mr. Major, is this something that you guys
15 are willing to consider? If not, that's fine. Like I said,
16 that's what we are here for. I'm happy to rule on this motion
17 and any others that come my way. It just doesn't seem to be
18 maybe the most productive use of your client's money or the
19 Laus' money; but if you want that result, then I can't force
20 you. I think you've participated twice now at my request, and
21 I don't feel like I can or should ask you to do more if you
22 don't want to.

23 MR. MAJOR: Your Honor, we are going to go back to our
24 clients with the characterization that was made today about the
25 arrangement.

1 THE COURT: I've heard it myself, so there ought not
2 to be any backtracking on the part of the Laus.

3 MR. MAJOR: Okay.

4 THE COURT: We've got it on the record. All you've
5 got to do is ask for a transcript and we'll provide it to you.
6 This is their position, and I'll let the magistrate judge know
7 that as well myself as soon as we are done.

8 MR. MAJOR: I'm going to do that. I would say that
9 the judge probably shouldn't set something with the magistrate.

10 THE COURT: Here's what I'll do. Is a week long
11 enough or a couple of weeks to make a decision?

12 MR. MAJOR: I would request the Court rule on -- this
13 is holding out -- we filed this for a reason and we think the
14 Court's decision either way is informative and helpful.

15 THE COURT: I understand. I completely understand. I
16 get how sometimes clients need decisions, and if this is one of
17 those situations, again I'm happy to comply. That's what we
18 are here for. At the same time, I also understand that the
19 parties don't want -- if you sense or you think that the
20 decision that's forthcoming is adverse to you, sometimes
21 clients don't want an adverse decision out there.

22 And so what I'm going to do is this: I'll give you
23 20 days. Well, I'll give you three weeks, that's a little bit
24 cleaner. What's today's date? We are at the 6th. Well, three
25 weeks is -- so we will give you until the 28th. The 27th is

1 actually a holiday, it's Memorial Day. We will give you until
2 the 28th. I'm not going to do anything right now until you
3 tell me, sometime between now and the 28th, what you wish for.

4 If you are prepared to get back to Judge Trader with
5 the parties on the other side and conduct what would be a third
6 settlement conference with this being the baseline -- I know
7 you explored other options with the magistrate judge including
8 the purchase of a van, I'm fine with that not being on the
9 table. If you looked at that and that doesn't work and if this
10 is the only option now, with this being the type of space that
11 they have now in my eyes committed to, that that be the only
12 option to discuss as the front -- the center piece of a
13 settlement, I'm good with that. You let me know whether your
14 clients are willing to participate in such a third session, any
15 time between now and the 28th.

16 At the same time, you let me know whether they are
17 willing to participate in such an effort, you let me know
18 whether you want an actual written ruling on the motion. The
19 two don't have to be -- they can be mutually exclusive, you can
20 tell me we want you to hold the ruling in abeyance while we
21 pursue these settlement efforts, you can also tell me we're
22 willing to pursue these efforts but we need a ruling -- or I
23 guess the third permutation is we need a ruling and we are not
24 willing to participate. Those are the three outcomes, it seems
25 to me, and I'm happy to live with any of them; is that fair?

1 MR. MAJOR: That sounds fair.

2 THE COURT: We will wait -- if the parties could stand
3 down, I think it would behoove everyone not to incur any
4 additional costs because that's only going to make -- if you do
5 sit down with the magistrate judge -- things more difficult to
6 resolve if you spend more more. So I ask that you don't file
7 any other motions, you try to attorneys fees to a minimum until
8 we know what the AOA wishes to do between now and the 28th.
9 Is that fair for everyone?

10 MR. PHILLIPS: Yes, Your Honor.

11 MR. MAJOR: Yes, Your Honor.

12 MR. PHILLIPS: May I ask --

13 THE COURT: Sure.

14 MR. PHILLIPS: We support a prompt settlement
15 conference. But so that we don't bid against ourselves as of
16 yet, defense hasn't made any settlement offer other than drop
17 it and forget about it. So to kick it off, if we are going to
18 have a settlement, would the Court instruct them to submit an
19 offer?

20 THE COURT: Well, I'll do this: I will -- I'm not the
21 one conducting the settlement conference, it would be
22 Magistrate Judge Trader; so I'm going to leave it to him, but
23 I'm going to wait for the defense to tell us whether they are
24 willing to participate. I think that's the very first step
25 before we make any demands or conditions on the AOA.

1 Are they willing to sit down with you all for this
2 third round? If they are, then I'll leave it to Magistrate
3 Judge Trader. I can't predict whether he thinks that would
4 facilitate things or stop things in their tracks before you all
5 even get into the room. That's up to him to decide, and I'm
6 not going to step on his toes as far as that goes. But I'm
7 willing to mention it to him as something that he ought to give
8 some thought to in ordering -- in issuing a settlement
9 conference order.

10 Again, if the defendants wish to participate, he can
11 make that request or he can find that not to be productive to
12 your go-round, but that's all I'm willing to commit to; okay?
13 Anything else.

14 MR. GARRICK LAU: Your Honor, I would like to say
15 something.

16 THE COURT: You're represented. You're entitled to be
17 here, but you're not entitled to say anything. If you want to
18 speak --

19 MR. PHILLIPS: If I can have a brief moment.

20 (Discussion was off the record.)

21 THE COURT: Mr. Phillips, do you wish to say anything
22 further?

23 MR. PHILLIPS: More tales of woe, which we don't need
24 to add on. There is no change in our position or our request.

25 THE COURT: All right. You were having a brief

1 discussion with Mr. Garrick Lau, and the court reporter could
2 only hear bits and pieces of it so I instructed her, just so
3 you know, not to report that. I assume that was a private
4 discussion even though we could hear some of it, okay? So that
5 won't be part of the transcript.

6 MR. PHILLIPS: I can't whisper. I'm bad of hearing.
7 I can't hear a whisper.

8 THE COURT: All right. So that's not part of the
9 record, and you have no further comments.

10 Mr. Major, I appreciate your efforts regardless of
11 what the outcome may be with your clients, so we will await for
12 your response by the 28th.

13 MR. MAJOR: We will be prompt, Your Honor.

14 THE COURT: All right. We are in recess.

15 (Proceedings were concluded at 11:06 a.m.)

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COURT REPORTER'S CERTIFICATE

I, Gloria T. Bediamol, Official Court Reporter, United States District Court, District of Hawaii, do hereby certify that pursuant to 28 U.S.C. §753 the foregoing is a complete, true, and correct transcript from the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

DATED at Honolulu, Hawaii, June 14, 2019.

/s/ Gloria T. Bediamol
GLORIA T. BEDIAMOL.
RMR, CRR, FCRR